

# Exhibit D

Consumer Product Safety Commission, *Consumer Product Safety Improvement Act Section 108: Products Containing Certain Phthalates*,  
<http://www.cpsc.gov/ABOUT/Cpsia/faq/108faq.html>  
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## US Consumer Product Safety Commission

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### Section 108: Products Containing Certain Phthalates

#### What kind of products does the phthalates prohibition apply to?

Three phthalates, DEHP, DBP, and BBP, have been permanently prohibited by Congress in concentration of more than 0.1% in "children's toys" or "child care articles." A "children's toy" means a product intended for a child 12 years of age or younger for use when playing, and a "child care article" means a product that a child 3 and younger would use for sleeping, feeding, sucking or teething.

Three additional phthalates, DINP, DIDP, and DnOP, have been prohibited pending further study and review by a group of outside experts and the Commission. This interim prohibition applies to child care articles or toys that can be placed in a child's mouth or brought to the mouth and kept in the mouth so that it can be sucked or chewed that contains a concentration of more than 0.1% of the above phthalates.

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#### Does the phthalate prohibition apply to inaccessible parts?

The prohibition on phthalates applies to all parts of a children's toy or child care article as defined in section 108 of the CPSIA. Section 108 does not make an exception or exemption for accessibility for phthalates as is the case for lead in children's products under section 101.

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#### Does the prohibition on phthalates apply to jewelry?

It depends. If such jewelry is intended for use as a toy for a child 12 years of age or younger, the phthalates prohibition would apply.

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#### Does the prohibition on phthalates apply to sporting goods?

The category of products known as "sporting goods" can include toys but not all sporting goods are toys. Indeed, the ASTM F963 toy safety standard, which becomes a mandatory consumer product safety standard on February 10, 2009, does not define sporting goods equipment to be a toy unless the product is a toy version of sporting goods equipment. However, "children's toy" in section 108 of the CPSIA is defined broadly as a "consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays." Therefore, any determination as to whether a particular sporting goods product would be a toy as defined under section 108, and therefore, subject to the ban on phthalates, would be made on a case by case basis after consideration of the following factors:

- A statement by the manufacturer about the intended use of the product, including a label on the product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by of the ages specified.

- Whether the product is commonly recognized by consumers as being intended for use by a child of the ages specified.
- The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

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### **When does the phthalates ban go into effect for children's toys and child care articles and does it apply to inventory in existence on February 10, 2009?**

On February 10, 2009, DEHP, DBP, and BBP are permanently banned, and DINP, DIDP, and DnOP are banned on an interim basis, for children's toys or child care articles as defined in section 108 of the CPSIA. The ban on the six specified phthalates in section 108 of the CPSIA only applies to products that are manufactured on or after February 10, 2009. For more information see the Office of General Counsel Advisory Opinion (<http://www.cpsc.gov/library/foia/advisory/320.pdf>).

*Posted 12/04/2008.*

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### **If the phthalates ban only applies to products manufactured on or after February 10, 2009, how can consumers tell whether products do or do not contain phthalates?**

Manufacturers and retailers can label products as complying with the limits in the CPSIA for phthalates regardless of when they were manufactured. The new statute permits products to be labeled as complying with CPSC requirements as long as that representation is accurate. Congress provided for stiff penalties if a company labels a product as compliant when it is not. Retailers can segregate products that meet the phthalates limits in certain areas of the store similar to how many grocery stores have grouped organic products together in one location. Many manufacturers eliminated phthalates from their products and have shared that information with their retailers. DEHP, one of the permanently banned phthalates, apparently has not been used in pacifiers, soft rattles, and teething rings since 1999. When in doubt, the consumer should ask the retailer or manufacturer of the product whether it contains phthalates.

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### **Is compliance to the limits of 0.1% for the six banned phthalates based on an analysis for all six regulated phthalates in combination or for each banned phthalate individually?**

The 0.1% limit for the six banned phthalates applies to each individual phthalate, not the total amount of these phthalates in the product.

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### **How do you determine whether a product is a children's toy for purposes of compliance with the phthalate limits?**

Section 108 limits the amount of phthalates in children's toys and certain other child care articles. A children's toy is a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. Any determination as to whether a particular product is designed and intended for use by a child 12 years of age or younger, would be made on a case by case basis after consideration of the following factors:

- A statement by the manufacturer about the intended use of the product, including a label on the product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by the ages specified.
- Whether the product is commonly recognized by consumers as being intended for use by a child of the ages

specified.

- The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

A manufacturer must apply these factors their products and then consider whether it is "for use by the child when the child plays" to determine whether a product meets the definition of a children's toy. The use of the product by the child for play is a fundamental aspect of such a determination. The Commission will be evaluating this using staff from Health Sciences, Human Factors, and Compliance, and hopes to provide additional guidance on this issue. In the interim, the Commission staff plans to use the definition of toy in the ASTM F963-07 toy standard for guidance.

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### **How do you determine whether a product is a child care article for purposes of compliance with the phthalates limits?**

A child care article is a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething. By way of example, a pacifier/teether would be an item that would help a child with sucking or teething; a bib would facilitate feeding; a crib mattress would facilitate sleeping as would pajamas and crib sheets.

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### **How do I know whether a toy may be placed in a child's mouth?**

Congress stated that the interim ban on DINP, DIDP, and DnOP applies only to children's toys that can be placed in a child's mouth. It provided the following definition of when a toy can be placed in a child's mouth. "A toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the toy can only be licked, it is not able to be placed in the mouth. By definition, if a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth." Thus, any toy in a baby's hand that can make it into the baby's mouth to be sucked on, or chewed, is subject to the interim ban.

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### **Does the packaging of a product have to comply with the phthalates ban? Does it matter if the packaging is normally discarded (e.g. poly bag and blister packaging) or intended to be reused (e.g., heavy gauge reusable bag with zipper closure to store a set of blocks)?**

The CPSIA defines children's toys as consumer products designed or intended for use by children 12 and under when playing. Packaging is generally not intended for use by children when they play, given that most packaging is discarded and is not used or played with as a children's toy or child care article. However, if the packaging is intended to be reused, or used in conjunction with a child care article or with a children's toy while playing, such as a heavy gauge reusable bag used to hold blocks, it would be subject to the phthalates ban.

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### **If a cosmetic material is used in a toy set which has play value would it be classified as a part of the toy and therefore subject to the ban on phthalates?**

Yes. If a cosmetic material is included in a toy set it is required to meet the requirements of the phthalates ban. However, cosmetics in general when not packaged with a toy, are not covered by the section 108 prohibitions and fall under the jurisdiction of the Food and Drug Administration.

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### **May a manufacturer use a phthalate that is not banned or an alternative plasticizer in a children's toy or child care article.**

The CPSIA has permanently banned DEHP, DBP, and BBP, while DINP, DIDP and DnOP are banned on an interim basis. However, an unbanned phthalate or an alternative plasticizer that is not one of the above banned phthalates may be used in a children's toy or child care article. During the upcoming study of phthalates required by the legislation, an assessment of the interim banned phthalates DINP, DIDP and DnOP will be conducted, to include an assessment of the full range of other phthalates and phthalate alternatives, for potential health effects.

Manufacturers are still responsible for ensuring that children's products are not considered "hazardous" under the general requirements of the Federal Hazardous Substances Act (FHSA). It is the manufacturer's obligation to ensure that any alternative plasticizer used be adequately tested such that the manufacturer is confident it does not pose a risk of injury under normal use or reasonably foreseeable misuse. Children's products that are hazardous or contain a hazardous substance are automatically banned. The Commission has issued chronic hazard guidelines to assist manufacturers in complying with the requirements of the FHSA. (<http://cpsc.gov/BUSINFO/chronic.pdf>).

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### **Do the phthalate limits apply to children's shoes or socks?**

Shoes and socks are not considered to be children's toys or child care articles. See the Office of the General Counsel Advisory opinion (<http://www.cpsc.gov/library/foia/advisory/318.pdf>).

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### **Are personal flotation devices, such as life jackets, subject to the CPSIA? Specifically, are such products that are made for, and used by, children considered to be children's products under the CPSIA?**

No. Life jackets are excluded from the definition of "consumer product" by the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(1)(G). They are regulated by the U.S. Coast Guard. The CPSIA did not change this. A "children's product" is defined by the CPSIA as "a consumer product designed or intended primarily for children 12 years of age or younger." Because life jackets are not consumer products, they would not be considered "children's products" or "children's toys" under the CPSIA and would not be subject to CPSIA requirements applicable to children's products. However, toy versions of life jackets or flotation devices like "water wings" do fall within the CPSC's jurisdiction.

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### **Would such items as pool toys and beach balls be considered children's toys under the CPSIA?**

Pool toys, beach balls, blow up rafts, and inner tubes designed or intended for children 12 years of age or younger would be considered children's toys. Those objects are used by children when playing in a swimming pool or at the beach. Therefore, they would be required to comply with the section 108 limits on specified phthalates.

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### **What certifications are required for children's toys and child care articles subject to the phthalates ban?**

Children's toys and child care articles manufactured on or after February 10, 2009, will need a general conformity certification based on a "test of each product or a reasonable testing program." Starting in September 2009, children's toys and child care articles will have to be certified based on third-party testing of the product by accredited third-party laboratories. The Commission must post its procedures for accrediting labs to test for phthalates in June 2009.

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**If you have a “children’s toy” or ‘child care article” with possible banned phthalates, do you have to issue a general conformity certificate on November 12, 2008, even though the phthalate ban is not effective?**

No. The phthalates ban for children’s toys and child care articles does not go into effect until February 10, 2009. As stated above, children’s toys and child care articles manufactured on or after February 10, 2009 will require a general conformity certification based on a “test of each product or a reasonable testing program.” Starting in September 2009, children’s toys and child care articles will have to be certified based on third-party testing of the product by accredited third-party laboratories.

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**How will CPSC select members of the Chronic Hazard Advisory Panel (CHAP), and ensure that the members are independent and objective?**

The legislation requires the Commission to form a Chronic Hazard Advisory Panel (CHAP) to study the health effects of phthalates on children. Requirements for the selection of CHAP members are described in the Consumer Product Safety Act (CPSA). The Commission will select 7 CHAP members from a list of at least 21 independent scientists nominated by the National Academy of Sciences. Scientists who are associated with manufacturers of products or chemicals covered by the CHAP and scientists employed by the federal government (except employees of the National Institutes of Health, National Toxicology Program, and the National Center for Toxicological Research) are not eligible to be nominated. Panel members will be selected on the basis of their qualifications. Once appointed, the Panel members will elect a Chairman and Vice Chairman.

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For more information on the CPSIA contact the Consumer Product Safety Commission at <http://www.cpsc.gov/cgibin/newleg.aspx>, and we will address the most frequently asked questions.

*These FAQs are unofficial descriptions and interpretations of various features of CPSIA and do not replace or supersede the statutory requirements of the new legislation. These FAQs were prepared by CPSC staff, have not been reviewed or approved by, and may not necessarily reflect the views of, the Commission. Some FAQs may be subject to change based on Commission action.*

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